

1 have to change based upon what we found out from
2 CPA's and whatnot. But what we were doing was
3 like a lease agreement. Buzz -- well, that's not
4 even right. The rights to use the Business
5 Options certificates -- the state certificates
6 and whatnot, we took "X" amount of the gross
7 income and made that gross income for Business
8 Options, if that makes sense. So that Business
9 Options could then pay all of the state filings
10 and any kind of refunds or anything that might
11 come up under its name.

12 Q. But otherwise, all the gross income
13 was going directly to U.S. Bell, and then Buzz?

14 A. Now we have it, as of this year, where
15 all of the gross income actually goes into what
16 we call our main bank account at Avatar, and we
17 make sure it doesn't just get spent. So then
18 everybody has to prepare -- well, everybody -- I
19 have to prepare a list of wanted expenditures off
20 of that income. And then, once that's approved,
21 the income gets moved over to the appropriate

1 company, and then the expenses are made by my
2 assistant.

3 Q. Now, how did that differ from 2001,
4 2002?

5 A. In 2001, 2002, before Avatar, the
6 money would have just come straight into Buzz or
7 U.S. Bell. And, I don't know, that we had a very
8 good system of weekly financial planning in
9 place. I think it was a much more random thing,
10 like, "Is there enough money to pay the rent?
11 Check the bank account." It was that kind of
12 thing.

13 Q. Those are very important
14 considerations, though?

15 A. Yes. But that was how it was.
16 Anyway, it's a lot better now, which is why I
17 took over that post. It was just kind of random
18 back then.

19 Q. Who was responsible for those types of
20 decisions in 2001, 2002?

21 A. Basically, Kurtis or I, whoever was

1 over the area. But Kurtis and I would coordinate
2 in general where the money was going to go. It
3 always seemed like we never had enough cushion to
4 spend money where we wanted to spend it. But,
5 anyway -- we do have a treasury manager, but it's
6 really not their decision as to where money goes.

7 Q. What was their responsibility?

8 A. The treasury manager in general is to
9 keep the Quick Books, our software, organized and
10 up to date; do bank reconciliations every week;
11 make sure payroll checks don't bounce; you know,
12 make sure payroll checks are done properly every
13 other week; make sure vendors are paid and happy;
14 anything like that.

15 Q. Who was that payroll -- or who was
16 that treasury manager in 2001, 2002?

17 A. Currently it's Rebecca Irwin. She has
18 been that for some time. Prior to Rebecca, it
19 was Craig Munzer. And I'm not really exactly
20 sure when he left -- the transition from Craig to
21 Rebecca.

1 Q. Are you still part-time now? Are you
2 still working part-time?

3 A. For me, yes. I mean, I like to work.
4 So when I am full-time, it's 60 to 80 hours or
5 more. Unfortunately, I don't have that kind of
6 energy, and sometimes I just have to leave during
7 the day. So, yes.

8 Q. And you have been working part-time
9 since July of 2002?

10 A. Yeah, roughly June or July, somewhere
11 in there I started coming in. And I think the
12 first project that I started putting my attention
13 on had nothing to do with anything other than
14 getting all of our books -- our accounting books
15 totally organized. I did a big project that I
16 coordinated. We went back in time, just to make
17 sure things were accounted for properly for the
18 accountants, bottom line. And then Rebecca -- I
19 basically spearheaded that project, and Rebecca
20 did all the work on that. Then I slowly started
21 to come back in and get involved as much as I

1 could when I was there. So it varied, you know.
2 There were weeks when I wasn't there, and there
3 were weeks where I might be there three days. So
4 basically starting in June it's been getting
5 better and better and better to the point now
6 where I can say I consistently am in there at
7 least three days a week.

8 Q. So even in the second half of 2002
9 there were times when you were out for two or
10 three weeks at a time, or maybe one week?

11 A. Maybe one week or something like that.
12 It was random, so Kurtis had to have his
13 attention on helping out.

14 Q. Okay.

15 A. I would do my best to stay in phone
16 contact with people and, you know, keep things
17 going. But there were times when I just couldn't
18 work.

19 Q. Were you involved with the hiring of
20 Lisa Green?

21 A. No.

1 Q. Shannon Dennie?

2 A. Yes.

3 Q. How were you involved in her hiring?

4 A. Gene Chill was out for the week. He
5 was in California, I believe, trying to handle
6 something with his ex-wife and children. So I
7 stepped up and was re-organizing division one. I
8 wasn't happy with division one and some of the
9 things, so I was trying to bring in new people.
10 And I hired a couple of people -- one was a girl
11 named Jodie -- oh, what was her last name?
12 Stevens, I believe. And then she replaced
13 somebody who worked for Gene, who really didn't
14 even want to be at our company is what it turned
15 out to be. She wanted to be suntanning, so --
16 anyway, I remember hiring Jodie right after I
17 hired Shannon, because Jodie was a paralegal
18 also. She doesn't work for us anymore. She went
19 back to the paralegal world. But, anyway, that
20 day I did hire Shannon.

21 Q. Was that kind of an administrative

1 role? Did you see her resume' when it came in;
2 did you interview her; did you do anything like
3 that?

4 A. Yeah, I knew we needed to put some
5 people into Bill's area because he was leaving.
6 And he had stacks -- I didn't know what all he
7 did, but I knew he had lots of stacks of
8 paperwork. I'm not real sure of what you mean by
9 administrative, but --

10 Q. Did you interview her?

11 A. She had been interviewed prior, so the
12 application was on file. But then I pulled her
13 in and did it -- I did the final interview, yes.

14 Q. Did you make the decision to hire her?

15 A. Yes.

16 Q. If you remember, what was it about
17 her -- either her or her application for
18 employment, her resume' -- that appealed to you?

19 A. She had a maturity about her. I mean,
20 she was a little older than the average person we
21 had been hiring. She had pretty good experience,

1 as far as I could tell -- I mean, I didn't have
2 much experience hiring anyone in the legal area.
3 But her resume' looked pretty good to me because
4 she had worked in the military; had worked for
5 some of the governmental agencies; was a
6 paralegal; seemed nice enough, like the kind of
7 person who was going to be here for awhile. So
8 that was the main thing. Of course, anybody we
9 hire, you know, we watch them for awhile to see
10 if they can actually do the job. But, you know,
11 it wasn't because of her telecommunication
12 background, which was hard to find out here.
13 Ideally, we would get somebody with a lot of
14 experience in that, but I figured she was smart
15 enough that she could learn that.

16 Q. What position did you hire her for?

17 A. To take over Bill's position. Not
18 vice president of administration, let me make
19 that clear, but to take over all of his
20 regulatory stuff. So basically to go in and be
21 full-time in the regulatory department for

1 Kurtis -- working for Kurtis.

2 Q. Was this in September or October of
3 2002?

4 A. I asked her the other day. I think
5 she worked for two days prior to Bill leaving.
6 Because I asked her how long he trained her, and
7 she said two days. So it must have been the end
8 of October.

9 Q. And at that time or right before he
10 left, was Bill vice president of admin?

11 A. No, he had been demoted after the -- I
12 believe after the EEOC situation, Kurtis demoted
13 him.

14 Q. Did you supervise Miss Dennie after
15 you hired her?

16 A. No.

17 Q. Was it your brother who supervised
18 her?

19 A. Yeah. I was a little bit involved as
20 far as, "Here is where your desk is; here is
21 Bill -- he's going to show you what to do. If

1 you have any questions or need to know where
2 anything is, I can try to help." But she within
3 probably a week or two knew more than I did in
4 that area.

5 Q. Did you work with her on any project
6 or particular responsibility that she had?

7 A. No. I mean, she will definitely, you
8 know, ask me questions from time to time about
9 maybe something we are doing in the company on a
10 day-to-day matter, so we do communicate. But we
11 never work on any projects.

12 Q. All right. Were you involved at all
13 in the hiring of Gene Chill?

14 A. I don't know how to answer that. I
15 met him with Kurtis at a restaurant, but I was
16 still not really working.

17 Q. Okay.

18 A. Kurtis made the decision to hire Gene.
19 So, I mean, I was involved in the respect that I
20 met him before we hired him. But Kurtis thought
21 he might be a good choice, and I said okay.

1 Q. Did you all just meet for dinner?

2 A. It was lunch just so that I could -- I
3 think Kurtis wanted to hire him. But before he
4 did it, he wanted me to meet the guy. It was one
5 of those type things.

6 Q. Okay. And after the lunch, you guys
7 discussed hiring him --

8 A. Right.

9 Q. -- you and Kurtis?

10 A. Yes.

11 Q. Do you have any responsibility over
12 the sales and marketing department?

13 A. Well, vice president of expansion or
14 sales -- I am currently posted as that. So as
15 executive director, yes, I'm senior to the sales
16 and new customer acquisition.

17 Q. Okay. What were your particular
18 responsibilities with respect to sales and
19 marketing?

20 A. Mainly to try to expand our customer
21 base and keep things organized and running

1 smoothly so that we could test out new products
2 or new ideas, which we do from time to time in
3 trying to keep up with AT&T or whatever. I
4 also --

5 As far as that, I also spend a lot of
6 time on making sure that any rogue sales reps or
7 telemarketers are weeded out.

8 For example, I implemented a system a
9 couple of years ago where we actually -- and
10 they, of course, all know this. But we
11 randomly -- we have somebody full-time who does
12 nothing but listen to tape recordings. And we
13 randomly tape record our sales representatives
14 all day every day throughout the week. And then
15 this person sits there and monitors and then does
16 a check sheet; she completes that. If they are
17 doing really, really well and following the
18 script and making sure customers understand
19 exactly what they are buying, et cetera, then
20 they get a good grade basically. But if they are
21 making personal phone calls or violating any kind

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1 of company policy on misrepresentation, cussing
2 out a customer; you know, you name it; then they
3 get sent over to our inspections area and handled
4 appropriately. So that was probably the smartest
5 thing I've done in the last two years as far as
6 regarding the sales because that has really
7 changed things.

8 Q. When did you step into that position?

9 A. As executive director? Or do you mean
10 vice president of sales?

11 Q. Well, you said it's one of the
12 smartest things you have done over the last
13 couple of years.

14 A. Oh.

15 Q. When did the last couple of years
16 begin?

17 A. Oh, sometime in 2000, I think.

18 Q. Okay.

19 A. That system I put in was actually in
20 our division five or quality control, if you
21 will. Anyway, it's a full-time thing. Because

1 sometimes sales representatives are just trying
2 to get a bonus. And anyway, you have to just
3 stay on top of that.

4 Q. Was there -- there was a bonus program
5 in place for the number of new customers they
6 signed on?

7 A. Yeah, we always do sales and marketing
8 games or production bonus type stuff. But by and
9 large, it's pretty good now. I mean, we get the
10 occasional situation where a customer is sold.
11 And then their spouse comes home and sees this
12 new phone company or something like that, and
13 that's a situation. Because they may call in and
14 not know that their spouse ordered it. But by
15 and large, you know, we have -- But then, of
16 course, after all of that monitoring or whatnot,
17 then it goes to the verification company, so I'm
18 pretty pleased with the sales now.

19 Q. Were you responsible for writing any
20 telemarketing scripts that your sales people
21 read?

1 A. I've helped on occasion. Kurtis
2 signed off on basically all the telemarketing
3 scripts until recently. Actually, the last one
4 that was modified a couple of months ago, I did.
5 But basically it's been just a modification of
6 the basic script that Kurtis wrote, you know,
7 eight or nine years ago.

8 Q. Okay. Do you work with Kurtis at all
9 in writing these scripts?

10 A. Not really. We are pretty independent
11 brothers and have our own viewpoint on things.
12 We definitely will coordinate if we have a
13 difference of opinion on something. But mostly
14 Kurtis -- I mean, he comes from a sales
15 background, and so he was -- and had that
16 experience, where I didn't. So the scripts, he
17 had the know-how on that, if you will. He just
18 knew how to do it, so I trusted him. He wrote up
19 the scripts, and I ran with it, so --

20 Q. Okay. And that's even though you are
21 technically responsible for the sales and

1 marketing forces, he handled the script part?

2 A. Right. I mean, he had been doing it
3 for so long, yes, he would handle the scripts.
4 And they were working. So, I mean, why change
5 something that was working? So my duties were
6 more of making sure sales representatives showed
7 up day after day and making sure the managers
8 over the sales area were keeping them motivated
9 and happy as possible and that type of stuff.

10 Q. Okay. Did you have any responsibility
11 for writing the verification scripts?

12 A. I am hesitating because I just saw my
13 name on an old verification script from it seems
14 like years ago. So I know at one point I wrote
15 or modified one of the scripts. But really, no.

16 Q. Okay.

17 A. The sales scripts and the verification
18 scripts all had to get passed by the local
19 exchange carriers, via our billing agent, USBI.
20 Which that whole function fell under corporate
21 affairs, Department 20.

1 Q. Okay.

2 A. So I would certainly try to give my
3 input. Like recently we modified the script to
4 add the intrastate rates, within the state rates,
5 because we hadn't had that on the scripts. And I
6 discovered that some of our service challenges or
7 people canceling were in direct relation to that.
8 You know, because it's a little bit higher,
9 basically. We sell it at five cents a minute for
10 state-to- state, and it's thirteen cents per
11 minute within the state.

12 Q. Okay.

13 A. And then when they would get their
14 bill, they were like, "Hey," and they would
15 cancel because of the thirteen cents. So now we
16 put it on the scripts, and we actually sell it
17 and verify it. But I think that just started
18 this year.

19 MR. HARKRADER: Let's take a
20 five-minute break.

21 (A short break was taken.)

1 BY MR. HARKRADER:

2 Q. Before we took the break, you were
3 talking about how scripts now, as of fairly
4 recently, include a reference to intrastate rates
5 of thirteen cents per minute. Do you know if
6 that's the rate across all the states in which
7 you provide services?

8 A. I believe it is, other than perhaps
9 Hawaii and Alaska, which I don't even think we
10 have any customers there.

11 Q. Do you have different scripts for
12 those states?

13 A. No, we have -- the script is actually
14 blank where it says, "Your state rate is," and
15 then we have a rate chart that the sales
16 representatives have nearby that shows each
17 state. So they would know if the rates are
18 different in a certain state. Or, also,
19 sometimes the customer may ask, "What is your
20 rate to Mexico," and that would have the
21 international rate also.

1 Q. And you just started putting that in
2 the scripts this year?

3 A. I believe it was this year. We had
4 the rates available for any customers who would
5 ask, but we were marketing to compete with a lot
6 of -- you know, with AT&T and all these larger
7 companies' market, which is primarily, "Our
8 state-to-state rate is 'blah'," so --

9 Q. Okay. You mentioned earlier that one
10 of your responsibilities was doing what you call
11 weeding out rogue sales reps. Was that something
12 that happened often in a given week or a given
13 month?

14 A. No, not really. I think -- You know,
15 most of the -- I mean, we're bringing in brand
16 new people all the time. Our generic ad that we
17 run in the newspapers is, "Eight dollars an hour,
18 start immediately."

19 Q. Okay.

20 A. So we are pulling people in who
21 previously were maybe working at McDonald's or

1 whatnot. This is a step up for them, and we are
2 training them. So we are taking them from ground
3 zero and trying to find out if they have the
4 people skills and confront to get on the phone
5 and deal with hang-ups and whatnot for eight
6 hours a day. So we are taking them from A to Z
7 pretty quickly. So most of the corrections occur
8 because the person is actually learning about the
9 business and what we are actually selling and
10 that kind of thing. But every now and then, you
11 know, you will get somebody who is just
12 deceitful. And we handle them accordingly.

13 Q. For example, how do you handle them?

14 A. Well, if they don't correct after the
15 first time, then by and large they are
16 terminated. If we discover that they are
17 knowingly misrepresenting us to the customer or a
18 product line to the customer or, you know,
19 whatever along those lines, we get them out; we
20 can't have that.

21 Q. Can you give me an example of what an

1 employee would do in those situations?

2 A. Yeah. We have an employee sign when
3 they first start with us different paperwork.
4 And one of the documents that we have them sign
5 is, "I will not misrepresent, and I will not
6 represent the company as being the local exchange
7 carrier," et cetera. And then we train them. So
8 if we get a person that's saying, "Hi, I'm with
9 Southwestern Bell," you know, we've got a
10 problem. So that would be a really good example.

11 Q. Did that actually happen -- did
12 someone use that name?

13 A. By and large what happens -- I don't
14 know. I haven't heard a tape of that actually
15 happening. But I've heard that it has happened.
16 But I think what happens more often than not is
17 that the customer -- the potential customer will
18 say, "Are you with Southwestern Bell," or Verizon
19 or whatever, and a sales rep might ignore that
20 question completely or verify it, "Oh, yeah, it
21 will be on your bill." But they leave the

1 customer thinking that's who we are, something
2 like that, and that's not okay.

3 Q. Do you have any idea how often
4 something like that happened in 2002?

5 A. No, I wouldn't be able to put a number
6 on that. I mean, it would happen occasionally, I
7 suppose. I don't know -- if you have a rogue
8 representative doing that, and you don't catch
9 them, then they could be doing it, you know, a
10 number of times each day.

11 Q. Right.

12 A. So I wouldn't know how to pinpoint a
13 figure for you.

14 Q. Yeah, that's fair. Do you keep some
15 sort of a list of the number of employees that
16 you do catch misrepresenting the company?

17 A. We have -- We just implemented, and I
18 don't know how far back it goes -- it may go back
19 all of 2002 or it may even go further because I
20 told the people doing this project to do some
21 clean-up with it. But when people are routed

1 out; in particular, sales representatives; we
2 want to determine why. Were they not happy with
3 us; was it something in the training that went
4 wrong; were they routed out for insubordination,
5 misrepresentation, et cetera. So we had a list
6 of I think it was eight or nine reasons people
7 left the company. And when they leave, we enter
8 that code into the computer. So as far as any
9 lists, that would be the only list that I could
10 come up with that would show you the numbers of
11 people routed out for whatever reason. And then
12 statistically, I suppose, we could determine how
13 many were routed out for misrepresentation.

14 Q. Does route out mean leave the company?

15 A. Yeah, leave the company.

16 Q. Have you seen that number decrease
17 through the last 18 months?

18 A. Yes, actually. I think we are doing a
19 heck of a better job on our hiring -- who we
20 hire. And then in the area where we now really
21 have that whole system of audio tape recording --

1 audio monitoring is what we call it, where we
2 tape record sales representatives all week long,
3 and we correct them like crazy. So we find it
4 ourselves now versus the state complaints.

5 Q. Where are your telemarketing located?
6 I mean, where do they actually report to work?

7 A. 8380 Louisiana.

8 Q. Is that where you go in for work when
9 you do go in?

10 A. Yes. My office, on purpose, has
11 windows and blinds and whatnot and is right near
12 the sales floor. So I have to walk in -- They
13 know I'm there, you know.

14 Q. Did there come a time when you
15 understood that the FCC was looking into Business
16 Options for allegations that Business Options
17 slammed certain customers?

18 A. Yes. Basically the day I received the
19 show of cause notice.

20 Q. Okay. Were you aware that the FCC
21 sent a letter in the very beginning part of

1 November of 2002 asking for responses from the
2 company?

3 A. I may have been dispatched by somebody
4 on that. But, no. As far as my awareness, it
5 was like, "Holy Cow." We got this show of cause
6 thing, and that was the day the FCC was
7 interested in us. Bill and Shannon and that
8 whole department kind of sits alone and does its
9 thing. And every so often I might get an update,
10 if you will. So no, I really had no idea that
11 the FCC was looking into us for that.

12 Q. Before you -- Well, when did you see
13 the Show of Cause Order?

14 A. Maybe three months ago. I got a copy
15 as soon as it was sent to us.

16 Q. Is this the document --

17 A. Yes.

18 Q. -- the Show of Cause Order?

19 A. Yes, that's the document. And I
20 didn't even read the whole thing at first because
21 I was not happy. It took about a month or so